

AMENDED IN SENATE APRIL 4, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 955**

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**Introduced by Senator Beall  
(Coauthor: Senator Hancock)**

February 4, 2016

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An act to amend Sections 1026 and 2968 of the Penal Code, and to add Section 4146 to the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Beall. State hospital commitment: compassionate release.

Existing law requires, when a defendant pleads not guilty by reason of insanity, that a jury determine whether the defendant was sane or insane at the time the offense was committed. Under existing law, if a defendant is found to be not guilty by reason of insanity, the court is required to commit the person to a state hospital, public or private treatment facility, or place him or her on outpatient status, as specified. Existing law requires the Director of State Hospitals to notify the Board of Parole Hearings, and requires the State Department of State Hospitals to discontinue treating a parolee, if the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission. Existing law, subject to exceptions, authorizes the release of a prisoner from state prison if the court finds that the prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 6 months, as determined by a physician employed by the department, and that conditions under which the

prisoner would be released or receive treatment do not pose a threat to public safety.

This bill would establish similar compassionate release provisions for a defendant who has been committed to a state hospital because, among other reasons, the defendant is incompetent to stand trial or has a severe mental disorder. The bill would require the Director of State Hospitals to notify the Board of Parole Hearings, and would require the State Department of State Hospitals to discontinue treating a parolee, if the patient meets the criteria established by the bill for release from the state hospital. The bill would make additional conforming changes and would authorize the director to adopt emergency regulations to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1026 of the Penal Code is amended to  
2     read:  
3     1026. (a) When a defendant pleads not guilty by reason of  
4     insanity, and also joins with it another plea or pleas, the defendant  
5     shall first be tried as if only ~~those~~ *the* other plea or pleas had been  
6     entered, and in that trial the defendant shall be conclusively  
7     presumed to have been sane at the time the offense is alleged to  
8     have been committed. If the jury finds the defendant guilty, or if  
9     the defendant pleads only not guilty by reason of insanity, then  
10    the question whether the defendant was sane or insane at the time  
11    the offense was committed shall be promptly tried, either before  
12    the same jury or before a new jury in the discretion of the court.  
13    In that trial, the jury shall return a verdict either that the defendant  
14    was sane at the time the offense was committed or was insane at  
15    the time the offense was committed. If the verdict or finding is  
16    that the defendant was sane at the time the offense was committed,  
17    the court shall sentence the defendant as provided by law. If the  
18    verdict or finding is that the defendant was insane at the time the  
19    offense was committed, the court, unless it appears to the court  
20    that the sanity of the defendant has been recovered fully, shall  
21    direct that the defendant be committed to the State Department of  
22    State Hospitals for the care and treatment of the mentally  
23    disordered or any other appropriate public or private treatment

1 facility approved by the community program director, or the court  
2 may order the defendant placed on outpatient status pursuant to  
3 Title 15 (commencing with Section 1600) of Part 2.

4 (b) Prior to making the order directing that the defendant be  
5 committed to the State Department of State Hospitals or other  
6 treatment facility or placed on outpatient status, the court shall  
7 order the community program director or a designee to evaluate  
8 the defendant and to submit to the court within 15 judicial days of  
9 the order a written recommendation as to whether the defendant  
10 should be placed on outpatient status or committed to the State  
11 Department of State Hospitals or other treatment facility. A person  
12 shall not be admitted to a state hospital or other treatment facility  
13 or placed on outpatient status under this section without having  
14 been evaluated by the community program director or a designee.  
15 If, however, it appears to the court that the sanity of the defendant  
16 has been recovered fully, the defendant shall be remanded to the  
17 custody of the sheriff until the issue of sanity has been finally  
18 determined in the manner prescribed by law. A defendant  
19 committed to a state hospital or other treatment facility or placed  
20 on outpatient status pursuant to Title 15 (commencing with Section  
21 1600) of Part 2 shall not be released from confinement, parole, or  
22 outpatient status unless and until the court that committed the  
23 person, after notice and hearing, finds and determines that the  
24 person's sanity has been restored, or meets the criteria for release  
25 pursuant to Section 4146 of the Welfare and Institutions Code.  
26 Nothing in this section prevents the transfer of the patient from  
27 one state hospital to any other state hospital by proper authority.  
28 Nothing in this section prevents the transfer of the patient to a  
29 hospital in another state in the manner provided in Section 4119  
30 of the Welfare and Institutions Code.

31 (c) If the defendant is committed or transferred to the State  
32 Department of State Hospitals pursuant to this section, the court  
33 may, upon receiving the written recommendation of the medical  
34 director of the state hospital and the community program director  
35 that the defendant be transferred to a public or private treatment  
36 facility approved by the community program director, order the  
37 defendant transferred to that facility. If the defendant is committed  
38 or transferred to a public or private treatment facility approved by  
39 the community program director, the court may, upon receiving  
40 the written recommendation of the community program director,

1 order the defendant transferred to the State Department of State  
2 Hospitals or to another public or private treatment facility approved  
3 by the community program director. If either the defendant or the  
4 prosecuting attorney chooses to contest either kind of order of  
5 transfer, a petition may be filed in the court requesting a hearing,  
6 which shall be held if the court determines that sufficient grounds  
7 exist. At that hearing, the prosecuting attorney or the defendant  
8 may present evidence bearing on the order of transfer. The court  
9 shall use the same procedures and standards of proof as used in  
10 conducting probation revocation hearings pursuant to Section  
11 1203.2.

12 (d) Prior to making an order for transfer under this section, the  
13 court shall notify the defendant, the attorney of record for the  
14 defendant, the prosecuting attorney, and the community program  
15 director or a designee.

16 (e) When the court, after considering the placement  
17 recommendation of the community program director required in  
18 subdivision (b), orders that the defendant be committed to the State  
19 Department of State Hospitals or other public or private treatment  
20 facility, the court shall provide copies of the following documents  
21 prior to the admission of the defendant to the State Department of  
22 State Hospitals or other treatment facility where the defendant is  
23 to be committed:

24 (1) The commitment order, including a specification of the  
25 charges.

26 (2) A computation or statement setting forth the maximum term  
27 of commitment in accordance with Section 1026.5.

28 (3) A computation or statement setting forth the amount of credit  
29 for time served, if any, to be deducted from the maximum term of  
30 commitment.

31 (4) State summary criminal history information.

32 (5) Any arrest reports prepared by the police department or other  
33 law enforcement agency.

34 (6) Any court-ordered psychiatric examination or evaluation  
35 reports.

36 (7) The community program director's placement  
37 recommendation report.

38 (8) Any medical records.

39 (f) If the defendant is confined in a state hospital or other  
40 treatment facility as an inpatient, the medical director of the facility

1 shall, at six-month intervals, submit a report in writing to the court  
2 and the community program director of the county of commitment,  
3 or a designee, setting forth the status and progress of the defendant.  
4 The court shall transmit copies of these reports to the prosecutor  
5 and defense counsel.

6 (g) For purposes of this section and Sections 1026.1 to 1026.6,  
7 inclusive, “community program director” means the person,  
8 agency, or entity designated by the State Department of State  
9 Hospitals pursuant to Section 1605 of this code and Section 4360  
10 of the Welfare and Institutions Code.

11 SEC. 2. Section 2968 of the Penal Code is amended to read:

12 2968. If the prisoner’s severe mental disorder is put into  
13 remission during the parole period, and can be kept in remission,  
14 or if the prisoner meets the criteria for release pursuant to Section  
15 4146 of the Welfare and Institutions Code, the Director of State  
16 Hospitals shall notify the Board of Parole Hearings and the State  
17 Department of State Hospitals shall discontinue treating the  
18 parolee.

19 SEC. 3. Section 4146 is added to the Welfare and Institutions  
20 Code, to read:

21 4146. (a) (1) A physician employed by the department who  
22 determines that a patient meets the criteria set forth in subparagraph  
23 (A) or (C) of paragraph (5) shall notify the medical director and  
24 the patient advocate of the prognosis. If the medical director  
25 concurs with the diagnosis, he or she shall immediately notify the  
26 Director of State Hospitals. Within 72 hours of receiving  
27 notification, the director or the director’s designee shall notify the  
28 patient of the discharge procedures under this section and obtain  
29 the patient’s consent for discharge. The director or director’s  
30 designee shall arrange for the patient to designate a family member  
31 or other outside agent to be notified as to the patient’s medical  
32 condition, prognosis, and release procedures under this section. If  
33 the patient is unable to designate a family member or other outside  
34 agent, the director or the director’s designee shall contact any  
35 emergency contact listed, or the patient advocate if no contact is  
36 listed.

37 (2) The director or the director’s designee shall provide the  
38 patient and his or her family member, agent, emergency contact,  
39 or patient advocate with updated information throughout the release  
40 process with regard to the patient’s medical condition and the

1 status of the patient's release proceedings, including the discharge  
2 plan. *A patient shall not be released unless the discharge plan*  
3 *verifies placement for the patient upon release.*

4 (3) The patient or his or her family member or designee may  
5 contact the medical director or director at the state hospital where  
6 the patient is located or the Director of State Hospitals to request  
7 consideration for a recommendation from the director to the court  
8 that the patient's commitment be dismissed for compassionate  
9 release and the patient released from the department facility.

10 (4) Upon receipt of a notification or request pursuant to  
11 paragraph (1) or (3), respectively, the Director of State Hospitals  
12 may recommend to the court that the patient's commitment be  
13 dismissed for compassionate release and the patient released from  
14 the department facility.

15 (5) The court shall have the discretion to dismiss the  
16 commitment for compassionate release and release the patient if  
17 the court finds that the facts described in subparagraphs (A) and  
18 (B) or subparagraphs (B) and (C) exist:

19 (A) The patient is terminally ill with an incurable condition  
20 caused by an illness or disease that would likely produce death  
21 within six months, as determined by a physician employed by the  
22 department.

23 (B) The conditions under which the patient would be released  
24 or receive treatment do not pose a threat to public safety.

25 (C) The patient is permanently medically incapacitated and  
26 requires 24-hour total care, and the medical director responsible  
27 for the patient's care and the Director of State Hospitals both certify  
28 that the patient is incapable of receiving mental health treatment.

29 (b) Within 10 days of receipt of a recommendation for release  
30 by the director, the court shall hold a noticed hearing to consider  
31 whether the patient's commitment should be dismissed and the  
32 patient released.

33 (c) A recommendation for dismissal submitted to the court shall  
34 include at least one medical evaluation, a discharge plan, a  
35 postrelease plan for the relocation and treatment of the patient,  
36 ~~and the findings listed in physician's and medical director's~~  
37 *determination that the patient meets the criteria set forth in*  
38 *subparagraph (A) or (C) of paragraph (5) of subdivision (a).* The  
39 court shall order the medical director to send copies of all medical

1 records reviewed in developing the recommendation to both of  
2 the following parties:

3 (1) The district attorney of the county from which the patient  
4 was committed.

5 (2) The public defender of the county from which the patient  
6 was committed, or the patient's private attorney, if one is available.

7 (d) The matter shall be heard before the same court that  
8 originally committed the patient, if possible.

9 (e) If the court approves the recommendation for dismissal and  
10 release, the patient's commitment shall be dismissed and the patient  
11 shall be released by the department within 72 hours of receipt of  
12 the court's order, unless a longer time period is requested by the  
13 director and approved by the court.

14 (f) The director or his or her designee shall ensure that upon  
15 release, the patient has each of the following in his or her  
16 possession, or the possession of the patient's representative:

17 (1) A discharge plan.

18 (2) A discharge medical summary.

19 (3) Medical records.

20 (4) Identification.

21 (5) All necessary medications.

22 (6) Any property belonging to the patient.

23 (g) After discharge, any additional records shall be sent to the  
24 patient's forwarding address.

25 (h) The director may adopt regulations to implement this section.  
26 The adoption of regulations for the implementation of this section  
27 by the department is exempt from the Administrative Procedure  
28 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
29 Division 3 of Title 2 of the Government Code).

30 (i) Nothing in this section shall preclude a patient who is  
31 released pursuant to this section from being committed to a state  
32 hospital under the same commitment or another commitment.